

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 89 QUALIFIED GENERATING FACILITY CERTIFICATION

20.2.89.1 ISSUING AGENCY. New Mexico environment department.
[20.2.89.1 NMAC - N, xx/xx/08]

20.2.89.2 SCOPE. All entities that hold title to a qualified generating facility pursuant to NMSA 1978, Section 7-9G-2.
[20.2.89.2 NMAC - N, xx/xx/08]

20.2.89.3 STATUTORY AUTHORITY. NMSA 1978, Section 7-9G-2, and NMSA 1978, Section 62-6-28.
[20.2.89.3 NMAC - N, xx/xx/08]

20.2.89.4 DURATION. Permanent.
[20.2.89.4 NMAC - N, xx/xx/08]

20.2.89.5 EFFECTIVE DATE. August x, 2008, except where a later date is cited at the end of a section.
[20.2.89.5 NMAC - N, xx/xx/08]

20.2.89.6 OBJECTIVE. The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, Section 7-9G-2.
[20.2.89.6 NMAC - N, xx/xx/08]

20.2.89.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

A. **"Department"** means the environment department.

B. **"New solar thermal electric generating facility"** means a solar thermal electric generating facility that begins construction no later than December 31, 2015.

C. **"Qualified generating facility"** means:

(1) a new solar thermal electric generating facility that may include an associated renewable energy storage facility; or

(2) a recycled energy project.

D. **"Recycled energy"** means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

E. **"Recycled energy project"** means an energy generating project using recycled energy that begins construction no later than December 31, 2015.

F. **"Small business"** means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, "small business" does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

G. **"Solar thermal electric generating facility"** means an electric generating facility that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

H. **"Title holder" or "entity(ies) that hold title"** means a person who holds or will hold a financial interest in the qualified generating facility.
[20.2.89.7 NMAC - N, xx/xx/08]

20.2.89.8 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.89.8 NMAC - N, xx/xx/08]

20.2.89.9 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

[20.2.89.9 NMAC - N, xx/xx/08]

20.2.89.10 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.89.10 NMAC - N, xx/xx/08]

20.2.89.11 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.89.11 NMAC - N, xx/xx/08]

20.2.89.12 to 20.2.89.199 [RESERVED]

20.2.89.200 APPLICABILITY. Any entity that holds title to a qualified generating facility located in New Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the title holder shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, xx/xx/08]

20.2.89.201 APPLICATION REQUIREMENTS.

A. Entities that hold title to a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

B. All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant's name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in 20.2.89.300 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, xx/xx/08]

20.2.89.202 CERTIFICATION PROCEDURES.

A. The department shall either grant or deny the certification within 180 days after the department receives the application.

B. The department shall grant or deny the certification based on information contained in the department's administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, and any other evidence considered by the department. The applicant has the burden of demonstrating that a certificate should be issued.

[20.2.89.202 NMAC - N, xx/xx/08]

20.2.89.203 CANCELLATION OF CERTIFICATION. The department shall cancel a previously issued certification if the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the

requirements of this part as a qualified generating facility.

20.2.89.204 to 20.2.89.399 [RESERVED]

20.2.89.400 FEES.

A. Fees for the review of application for certification shall be paid according to this fee schedule.

(1) For solar thermal electric generating facilities, the fee is \$1,000.

(2) For recycled energy projects, the fee is \$5,000.

B. For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.

C. Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.

D. All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

E. All fees shall be paid in U.S. dollars.

F. Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.89.400 NMAC - N, xx/xx/08]

HISTORY of 20.2.89 NMAC: [RESERVED]

**NEW MEXICO ENVIRONMENT DEPARTMENT
BEFORE THE SECRETARY**

**IN THE MATTER OF THE PROPOSED
NEW RULE, 20.2.89 NMAC
QUALIFYING GENERATING FACILITY
CERTIFICATION**

No. AQCA 08-34(R)

STATEMENT OF REASONS

The Air Quality Bureau of the Environmental Protection Division of the New Mexico Environment Department (“Department”), pursuant to 20.1.9 NMAC – *Rulemaking Procedures - Environment Department*, hereby petitions the Secretary of the Environment Department to adopt the Air Quality Bureau's proposed 20.2.89 NMAC – *Qualifying Generating Facility Certification*. The purpose of the proposed new rule is to implement the Department's responsibilities under Senate Bill 994 from the 2007 Legislative Session (codified as NMSA 1978 Sections 7-9G-2 and 62-6-28). Senate Bill 994 requires that the Environment Department issue rules with procedures for determining whether a solar generating facility, recycled energy facility, or coal electric generating facility that meets the definition in statute is a qualified generating facility as defined in the statute. The proposed regulation allows NMED to evaluate solar thermal and recycled energy projects to determine whether they meet the requirements of a qualified energy facility in order to qualify for tax credits. NMED would then issue a certification for projects that qualify, and would deny certifications to projects that do not meet the requirements.

The proposed regulation includes applicability requirements, application requirements, procedures for issuing certifications, provisions for cancelling previously issued certifications, and a fee schedule. Small businesses who meet the definition in Section 7 of the proposed regulation are entitled to a reduced fee.

Revisions to the regulation to address the coal electric generating facility requirements will be made at a later date. In the following statement of reasons, the Department has reproduced the full text of each section for the convenience of the Board, followed by a brief explanation of its purpose and basis, as appropriate.

20.2.89.1 ISSUING AGENCY. New Mexico environment department.
[20.2.89.1 NMAC - N, xx/xx/08]

This section sets forth the issuing agency as required by 1.24.10.8 NMAC.

20.2.89.2 SCOPE. All entities that hold title to a qualified generating facility pursuant to NMSA 1978, Section 7-9G-2.
[20.2.89.2 NMAC - N, xx/xx/08]

This section sets forth the scope of the rule as required by 1.24.10.8 NMAC.

20.2.89.3 STATUTORY AUTHORITY. NMSA 1978, Section 7-9G-2, and NMSA 1978, Section 62-6-28.
[20.2.89.3 NMAC - N, xx/xx/08]

This section sets forth the statutory authority of the rule as required by 1.24.10.8 NMAC. This legislation was passed in the 2007 Legislative session.

20.2.89.4 DURATION. Permanent.
[20.2.89.4 NMAC - N, xx/xx/08]

This section sets forth the duration of the rule as required by 1.24.10.8 NMAC.

20.2.89.5 EFFECTIVE DATE. July x, 2008, except where a later date is cited at the end of a section.
[20.2.89.5 NMAC - N, xx/xx/08]

This section sets forth the effective date of the rule as required by 1.24.10.8 NMAC.

20.2.89.6 OBJECTIVE. The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, Section 7-9G-2.
[20.2.89.6 NMAC - N, xx/xx/08]

This section sets forth the objective of the rule as required by 1.24.10.8 NMAC. If a generating facility qualifies for a certificate, it is eligible for an advanced energy credit, providing an incentive for certain types of generating facilities.

20.2.89.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

A. "Department" means the environment department.

B. "New solar thermal electric generating facility" means a solar thermal electric generating facility that begins construction no later than December 31, 2015.

C. **"Qualified generating facility"** means:

(1) a new solar thermal electric generating facility that may include an associated renewable energy storage facility; or

(2) a recycled energy project.

D. **"Recycled energy"** means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

E. **"Recycled energy project"** means an energy generating project using recycled energy that begins construction no later than December 31, 2015.

F. **"Small business"** means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, "small business" does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

G. **"Solar thermal electric generating facility"** means an electric generating facility that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

H. **"Title holder" or "entity(ies) that hold title"** means a person who holds or will hold a financial interest in the qualified generating facility.

[20.2.89.7 NMAC - N, xx/xx/08]

This section defines the terms used in throughout this rule, consistent with NMSA 1978 Section 7-9G-2. Because this rule will initially only apply to solar thermal electric generating facilities and recycled energy projects, other generating facilities covered by Section 7-9G-2 are not defined.

20.2.89.8 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.89.8 NMAC - N, xx/xx/08]

This section helps assure that if one provision is found to be unlawful, the remainder of the rule is not affected.

20.2.89.9 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

[20.2.89.9 NMAC - N, xx/xx/08]

This section helps assure that the rule will be properly interpreted to effectuate its purpose.

20.2.89.10 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.89.10 NMAC - N, xx/xx/08]

This section helps assure that prior administrative or court actions are not affected by this rule.

20.2.89.11 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.89.11 NMAC - N, xx/xx/08]

This section gives notice that nothing in this rule relieves a person from complying with other applicable laws.

20.2.89.12 to 20.2.89.199 [RESERVED]

20.2.89.200 APPLICABILITY. Any entity that holds title to a qualified generating facility located in New

Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the title holder shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, xx/xx/08]

This section sets forth who may apply for a certificate of eligibility, and requires that if circumstances change, the holder of a certificate must inform the Department so that the project can be re-evaluated for eligibility. Currently, due to the definition of qualified generating facility, the rule will apply only to solar thermal generating facilities and recycled energy projects. Developing a rule for coal plants that might sequester carbon emissions will be more complex and will be promulgated later.

20.2.89.201 APPLICATION REQUIREMENTS.

A. Entities that hold title to a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

B. All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant's name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in 20.2.89.300 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, xx/xx/08]

This section sets forth the information that must be included in an application for a certificate. If the applicant does not set forth sufficient information for the Department to make a determination of eligibility, it may deny the application.

20.2.89.202 CERTIFICATION PROCEDURES.

A. The department shall either grant or deny the certification within 180 days after the department receives the application.

B. The department shall grant or deny the certification based on information contained in the department's administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, and any other evidence considered by the department. The applicant has the burden of demonstrating that a certificate should be issued.

[20.2.89.202 NMAC - N, xx/xx/08]

This section sets forth a time period for the Department to act on the Application, and describes the information that the Department will rely on in making its determination.

20.2.89.203 CANCELLATION OF CERTIFICATION. The department shall cancel a previously issued certification if the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the requirements of this part as a qualified generating facility.

This section allows the Department to cancel a certification of the facility if it no longer

meets eligibility requirements.

20.2.89.204 to 20.2.89.399 [RESERVED]

20.2.89.400 FEES.

- A.** Fees for the review of application for certification shall be paid according to this fee schedule.
 - (1)** For solar thermal electric generating facilities, the fee is \$1,000.
 - (2)** For recycled energy projects, the fee is \$5,000.
- B.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.
- C.** Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.
- D.** All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).
- E.** All fees shall be paid in U.S. dollars.
- F.** Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.89.400 NMAC - N, xx/xx/08]

This section sets forth fee requirements. The fees are to recover expected costs of processing an application. Small businesses will pay only half what a large business will pay.

HISTORY of 20.2.89 NMAC: [RESERVED]

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

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